

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID S. WHITESIDE,)	
)	
Plaintiff,)	4:07cv3030
)	
vs.)	ORDER ON INITIAL REVIEW
)	
NEBRASKA STATE HEALTH AND)	
HUMAN SERVICES, et al.,)	
)	
Defendants.)	

This matter is before the court for initial review of the complaint filed by the plaintiff, David S. Whiteside, who has moved for leave to proceed in forma pauperis ("IFP") in this litigation. The plaintiff asserts federal civil rights claims pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights by the Nebraska Department of Health and Human Services ("HHS") and Nemaha County, Nebraska, in connection with child support collection matters. As a preliminary matter, filing no. 2, the plaintiff's motion to proceed IFP, is granted.

This case is assigned to the docket of District Judge Laurie Smith Camp. However, a Magistrate Judge may conduct initial review. Having reviewed the complaint, I find that this case need not be dismissed on initial review. Therefore, as initial review of the complaint is now completed, the plaintiff may obtain service of process on the defendants, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will undertake service of process on the plaintiff's behalf, without cost to the plaintiff, after the plaintiff completes the appropriate forms.

THEREFORE, IT IS ORDERED:

1. Filing no. 2, the plaintiff's Motion for Leave to Proceed In Forma Pauperis, is granted.
2. To obtain service of process on the defendants, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall send two summons forms and two USM-285 forms ("form 285") to the plaintiff together with a copy of this Order.
3. The summons and 285 form for the State of Nebraska must be addressed c/o the Nebraska Attorney General at 2115 State Capitol, Lincoln, Nebraska 68509. The summons and 285 form for Nemaha County must be addressed c/o the Nemaha County

Clerk, 1824 N Street, Ste. 201, Auburn, NE 68305.¹

4. The plaintiff shall, as soon as possible, complete the forms and send them back to the Clerk of Court. In the absence of the completed forms, service of process cannot occur.

5. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal for service of process. The court will copy the complaint on the plaintiff's behalf. The Marshal shall serve each summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

6. Fed. R. Civ. P. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. Failure to obtain service of process on a defendant within that deadline may result in dismissal of this matter without further notice as to such defendant.

7. If service has been obtained on no defendant by the deadline set forth above, the Clerk of Court shall bring this case to the attention of the court.

8. After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies of documents on other parties by first class mail.

9. The plaintiff shall include with each document submitted to the court a **"Certificate of Service"** stating the date a true and correct copy of such document was mailed to the defendants or to the attorney of any represented defendant. **If the plaintiff does not include a Certificate of Service indicating that a copy of a communication to the court has been sent to the other parties to the case, the court will issue a Notice of Deficiency and might strike the plaintiff's communication from the record.**

10. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

¹See Neb. Rev. Stat. § 25-510.02, which states in pertinent part:

(1) The State of Nebraska ... may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail service addressed to the office of the Attorney General.

(2) Any county, city, or village of this state may be served by personal, residence, or certified mail service upon the chief executive officer, or clerk.

11. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court.

12. The plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

13. IMPORTANT NOTE: **Any communication filed by the plaintiff with the court must bear the plaintiff's original signature.**

14. Filing no. 2, the plaintiff's Motion to Proceed IFP, is granted.

DATED this 31st day of January, 2007.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Do not copy your complaint to attach to the summons; the court will do that for you.
4. You may serve only defendant(s) named in the case caption of the complaint. If you wish to serve additional defendant(s), you must move for leave to amend the complaint to add the additional defendant(s) to the case caption.
5. Be sure to print your case number on all forms.
6. You must give an address for the party to be served. The U.S. Marshal will not know a defendant's address.
7. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
8. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
9. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
10. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.